

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

2:13-CV-1113 JCM (PAL)

In Re:

AMERICAN PACIFIC FINANCIAL  
CORPORATION,

Debtor.

DOTAN Y. MELECH, not individual  
but as Chapter 7 trustee of the above  
debtor,

Plaintiff(s),

v.

LARRY POLHILL, et al.,

Defendant(s).

**ORDER**

Presently before the court is movant Larry Polhill's motion to withdraw reference. (Doc. # 1-1). The appointed trustee, Dotan Melech, has filed an opposition (doc. # 1-1, p. 109-120) and Polhill has filed a reply (doc. # 3).

This motion arises out of an adversary action in the underlying bankruptcy proceedings. The complaint contains eleven causes of action for: (1) breach of fiduciary duty; (2) aiding and abetting breach of fiduciary duty/civil conspiracy; (3) conversion; (4) avoidance of preferential transfers; (5) avoidance of fraudulent transfers; (6) turnover; (7) unjust enrichment; (8) constructive trust; (9)

1 equitable lien; (10) breach of contract; and (11) breach of covenant of good faith and fair dealing.

2 Polhill asserts that the matter is subject to withdrawal of reference pursuant to 28 U.S.C. §  
3 157(d). That section provides:

4 The district court may withdraw, in whole or in part, any case or  
5 proceeding referred under this section, on its own motion or on timely  
6 motion of any party, for cause shown. The district court shall, on  
7 timely motion of a party, so withdraw a proceeding if the court  
8 determines that resolution of the proceeding requires consideration of  
9 both title 11 and other laws of the United States regulating  
10 organizations or activities affecting interstate commerce.

11 Polhill has not filed a proof of claim and has asserted a jury demand. Polhill asserts that the  
12 causes of action in the underlying complaint are not listed in 28 U.S.C. §157(b)(2) as core  
13 proceedings. In particular, he maintains that “ each [cause of action] involves state law issues and  
14 thus is beyond the reach of the bankruptcy court to hear and determine. Such claims should be  
15 adjudicated by an Article III court independent of whether a proof of claim has been filed.” (Doc.  
16 # 1-1, p. 67) (citing *In re Castlerock Properties*, 781 F.2d 159, 162 (9th Cir. 1986)).

17 Polhill further asserts that, “[b]ecause this Court will be required to review the bankruptcy  
18 court's proposed findings and conclusions of law de novo, judicial efficiency is promoted by  
19 withdrawing the reference and holding one hearing instead of two to resolve factual issues.” (*Id.*).  
20 Melech opposes the motion on the grounds that it is “premature” despite conceding the inevitability  
21 of the matter being brought to this court.

22 With respect to “non-core” claims, the default practice is for the bankruptcy court to hold  
23 proceedings and make proposed findings of fact and conclusions of law, which in turn are reviewed  
24 by the District Court. *See* LR 1001(a); 28 U.S.C. § 157. The Ninth Circuit has held that in  
25 considering withdrawal, a “district court should consider the efficient use of judicial resources, delay  
26 and costs to the parties, uniformity of bankruptcy administration, the prevention of forum shopping,  
27 and other related factors.” *Sec. Farms v. Int'l Brotherhood of Chauffeurs, Warehousemen & Helpers*,  
28 124 F.3d 999,1008 (9th Cir. 1997).

The court finds judicial efficiency and the uniformity of bankruptcy administration would  
be better served by having the bankruptcy court continue to decide the pre-trial motions, including

1 discovery related ones, prior to removing the case to this court.

2 The bankruptcy court is well-versed in the history and procedural posture of this action. It  
3 has managed these proceedings over the last several years, and there is no legitimate reason to  
4 withdraw at this juncture. As the court most familiar with this case, the bankruptcy court is in the  
5 position to most efficiently manage its course while minimizing delay and costs. *Sec. Farms*, 124  
6 F.3d 999. In sum, Polhill has not met his burden of demonstrating why this case warrants immediate  
7 withdrawal.

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the motion to withdraw  
10 reference (doc. # 1) be, and the same hereby is, DENIED.

11 DATED February 5, 2014.

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14 **UNITED STATES DISTRICT JUDGE**